

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos 1798/94 & 1007/97

WITH CIVIL APPLICATION NO.1233/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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PATEL GOPAL ANAND

Versus

PATEL BHURA GOPAL

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Appearance:

MR ND NANAVATI with Mr.B.K.Oza for Petitioner  
P.J.PATEL for V.H.Desai for respondents

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 09/10/97

ORAL(COMMON) JUDGEMENT

1. Regular Civil Appeal No.23 of 94 as registered in the Court of District Judge, Junagadh and the papers and record of the said appeal were called for by this court vide its order dated 6th December, 1995 which reads as under:

"On admissional hearing of this First Appeal

No.1798 of 1994 against the judgment and decree passed in Special C.A.No.76 of 1975, it was brought to the notice of the Court that Special Civil Suit No.78 of 1975 was filed in the court of Civil Judge (SD) by respondent No.2 and 3 herein for specific performance of an agreement to sell dated 14th April, 1975 or in the alternative for a decree of Rs.45,000/-. Such suit filed by the respondent Nos 2 & 3 is decreed by the trial court and the Regular Civil Appeal No.23 of 1994 is preferred by the present appellants as well as respondent No.1. The issues involved in these two appeals are to certain extent interconnected and to finally decide the same effectively and effectually, without causing prejudice to the rights and interest of the parties, it would be just and proper to order transfer of Regular Civil Appeal No.23 of 1994 from the District Court at Junagadh along with Record and Proceedings to this court. Mr.R.M.Chhaya who appears for the appellant in this appeal states that the present appellant being the appellant in the said appeal along with Patel Bhura Gopal have no objection to such appeal being transferred to this court. Mr.V.H.Desai, appearing for the respondents No.2 and 3 has also no objection to such appeal being transferred to this court. Hence, the District Court at Junagadh is directed to transfer the proceedings of Regular Civil Appeal No.23 of 1994 along with entire record and proceedings of the suit to this court by 31st of January, 1996.

2. After receipt of the papers of the said appeal, the present First Appeal as well as the said appeal shall be posted for hearing before this court (S.D.Shah,J) on 5th of February, 1996. Office is also directed to call for the record and proceedings of Special Civil Suit No.1975 from the court of Second Joint Civil Judge (SD) Junagadh by 31st January, 1996."

Said appeal is numbered by the Registry of this court as FA No.1007/97. These two appeals are the outcome of judgment and decree passed by the 2nd Jt.Civil Judge (SD) at Junagadh after consolidating Special C.S.No.76 of 75 with Spl.C.S.No.78 of 75. By judgment and decree, dated

17.1.1994 passed by the 2nd Jt.Civil Judge (SD), Junagadh the Spl.C.S.No.76 of 75 was dismissed and the ad-interim injunction which was granted and confirmed was vacated. As regards Spl.C.S.No.78 of 75 the trial court decreed the suit and ordered the defendant No.1--Patel Bhura Gopal to execute the sale deed of the suit lands admeasuring 6 acre 37 gunthas as described in the application and defendants were further directed to handover the actual peaceful possession of the suit land to plaintiffs. The plaintiffs were also directed to pay balance amount of the price being Rs.4,000/- to the defendant No.1--Patel Bhura Gopal at the time of execution of sale deed of the suit land in favour of plaintiffs.

2. Since the disputes involved in the two suits were interlinked and finding on one may affect the finding on identical issue in another suit, the trial court in exercise of its power consolidated the two suits, recorded the common evidence and has ultimately passed the aforesaid judgment and decree. Mr.B.K.Oza for Mr.N.D.Nanavaty, however, vehemently contended before the court that the judgment and decree passed by the 2nd Jt.Civil Judge (SD) Junagadh is not maintainable and sustainable in law firstly because under section 25 of the Bombay Civil Courts Act special suits having the value of more than Rs.25,000/- but less than Rs.50,000/can be decided by the Civil Judge(SD) and since Spl.C.S.No.78 of 75 was valued at Rs.49,000/- the Civil Judge (SD), Junagadh was deprived of his jurisdiction to hear and determine the suit by virtue of Section 6 of the Gujarat Act 10 of 1993. Aforesaid submission pales into insignificance firstly in view of the fact that the monetary jurisdiction of the Civil Judge (SD) is increased and secondly because the appeal which is filed in the District Court is called for before this court at the joint request of the parties so that no inconsistent findings are recorded by two courts, namely, this court and the Court of District Judge, Junagadh. Secondly, it was submitted before the court that the order of the trial court was without jurisdiction in deciding suit and not passing the decree, Mr.Oza is not in position to point out as to how the court has no jurisdiction. In fact, the two suits were consolidation after hearing the parties and against consolidatation of two suits no revision was preferred before this court in order to show any objection raised, and on the contrary the parties submitted to the jurisdiction of the same court and agreed to try the suits before the same court because the issues involved in the suits were intermingled and finding of one would depend upon the finding of another

and the order of consolidation of the suits was passed by the trial court after hearing the parties and not in their absence or without hearing the appellant before this court. No grievance on that count, therefore, could be permitted to be raised at this stage. In my opinion, the consolidation of two suits was absolutely proper, just and was needed in view of the facts which were intermingled and which were required to be finally decided by common judgment. The issues involved in the two suits were substantially same and any inconsistent finding on one may affect the decree of the other suit and therefore the order of consolidation of the suits was absolutely just and proper more so when the suits were consolidated with the consent of the parties and no challenge was raised against such order of consolidation.

3. Mr.B.K.Oza for Mr.N.D.Nanavaty, thirdly submitted that the joint trial of the suits has prejudiced the defense of the defendant in one of the suits and of the plaintiffs in Spl.C.S.No.78 of 1995. I do not find any substance in said submission also because issues involved in the suits were intermingled and intermixed and recording of common evidence would on the contrary enable the court to reach the correct conclusion and would avoid bar of resjudicata or constructive resjudicata.

4. It is required to be noted that the Spl.C.S.No.76 of 75 was filed in the court of 2nd Jt.Civil Judge(SD) by Patel Gopal Anand and 4 other plaintriffs for declaration that the defendant Patel Bhura Gopal of that suit had the authority to execute the sale deed. The 2nd Spl.C.S., i.e. Spl.C.S.No.78 of 75 was filed to direct Patel Bhura Gopal and Patel Anandbhai to execute the sale deed on payment of balance amount of Rs.4,000/- as the vendor was and is always ready and willing to pay the balance amount to get the sale deed executed. It may be noted at this stage that against judgment and decree passed in Spl.C.S.No.76 of 75 present FA is preferred in this court, i.e FA No.1798 of 94 and against judgment and decree passed in Spl.C.S.No.78/75 appeal was preferred before the District Court being Reg.Civil Appeal No.23 of 94. At the admissional hearing of this First Appeal No.1798 of 94 on 6th December, 1995 and after hearing the parties and at the common request of the parties record and proceedings of the appeal which was filed before the district court were called for and it was decided that both these appeals be tried and decided by common judgment and order of this court in accordance with law so as to avoid inconsistent findings and also because the suits were consolidated in the trial court and common

evidence was recorded.

5. In view of the aforesaid facts, when the record and proceedings of appeal filed in the district court were called for by this court with the consent of the parties, the office of this court even registered that appeal as FA No.1007/97 and hence these two appeals are decided by this court by this common judgment. After consolidating the suits the court perused the pleadings and raised common issues at Exh.50. The first five issues, namely, whether the suit properties are the joint family properties of the defendant No.1, whether the defendant No.1 had separated from the joint family on receiving Rs.25,000/- in lieu of his share in the joint property, whether the defendant Nos. 2&3 got the agreement of sale executed under the threat and coercion, and whether the defendant Nos 2 & 3 disturb the possession of the suit land, they were answered in negative by the court after considering oral as well as documentary evidence. Having taken to two of the aforesaid five issues, which are discussed together by the trial court, Mr.B.K.Oza faintly tried to submit that the document at Mark 4/1 is on the stamp paper dated 5.3.77 which is of Rs.3/- only and the amount of Rs.25,000/- is paid to Bhura but according to plaint Rs.5,000/- was paid by the plaintiff and subsequently after 15 days balance amount of Rs.15,000/- was paid by defendant Nos 2, 4 & 5 equally. The trial court has considered the document at Mark 4/1, dated 5.3.73 and has rightly found that the said document is not proved and has not exhibited the same and therefore no importance can be attached to it. The trial court has also found that S.Nos 19/1, 19/2, 163/2 and 164/2 totally admeasuring to 6 acre 37 gunthas were agreed to be sold for consideration of Rs.49,000/- and the amount of Rs.45,000/- was already paid and balance amount of Rs.4,000/- was to be paid at the execution of sale deed. The trial court also found that in fact possession was handed over to the vendee by the vendor and was found that only the sale deed was to be executed by 25th June, 1975 and therefore the suit for specific performance was filed. The entries made in record of rights as well as village form 6 also go to show that the aforesaid parcels of land were mutated in the names of minor children of Bhura Gopal and on the date of agreement of sale. Much period has thereafter expired and minor children have become majors and they have challenged the execution of sale deed by Bhura Patel. Alternative defence that defendant No.1--Patel Bhura Gopal was in bad habits and was habituated to gambling and therefore it was necessary to safeguard the interests of other members of family and

to execute the sale deed was also taken into consideration by the trial court and finding is recorded by the trial court thereon. In view of the aforesaid reached by the trial court this court has no manner of doubt that the consolidation of two suits was absolutely just, proper and the suit for specific performance of agreement was rightly decreed and for payment of balance of Rs.4,000/-suit being Spl.C.S.No.76 of 75 was rightly dismissed by the trial court. The trial court has considered oral as well as documentary evidence in greater detail and Mr.B.K.Oza appearing on behalf of Mr.N.D.Nanavaty is not in position to convince this court as to how the appreciation of evidence is bad in law and as to how the agreement to sale was in anyway bad in law.

6. In view of the aforesaid, FA No.1798/94 is required to be rejected and FA No.1007/97 where Record and Proceedings are called for is also required to be rejected and same is rejected.

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